

## Department of the Navy, DoD

## § 776.10

of the members constitutes a quorum. The Chairman of the Committee shall be the AJAG for Military Justice. The Chairman may excuse members disqualified for cause, illness, or exigencies of military service, and may request JAG to appoint additional or alternate members on a temporary or permanent basis.

(b) *Purpose.* (1) When requested by JAG or by the Rules Counsel, the Committee will provide formal advisory opinions to JAG regarding application of rules contained in subpart B of this part to individual or hypothetical cases.

(2) On its own motion, the Committee may also issue formal advisory opinions on ethical issues of importance to the DON legal community.

(3) Upon written request, the Committee will also provide formal advisory opinions to covered attorneys about the propriety of proposed courses of action. If such requests are predicated upon full disclosure of all relevant facts, and if the Committee advises that the proposed course of conduct is not violative of subpart B of this part, then no adverse action under this part may be taken against a covered attorney who acts consistent with the Committee's advice.

(4) The Chairman will forward copies of all opinions issued by the Committee to the Rules Counsel.

(c) *Limitation.* The Committee will not normally provide ethics advice or opinions concerning professional responsibility matters (e.g., ineffective assistance of counsel, prosecutorial misconduct, etc.) that are then the subject of litigation.

### § 776.9 Rules Counsel.

Appointed by JAG to act as special assistants for the administration of this part, the Rules Counsel derive authority from JAG and, as detailed in this part, have "by direction" authority. The Rules Counsel shall cause opinions issued by the Professional Responsibility Committee of general interest to the DON legal community to be published in summarized, non-personal form in suitable publications. Unless another officer is appointed by JAG to act in individual cases, the fol-

lowing officers shall act as Rules Counsel:

(a) Director, JA Division, HQMC, for cases involving Marine Corps judge advocates, or civil service and contracted civilian attorneys who perform legal services under his cognizance; and

(b) AJAG for Civil Law, in all other cases.

### § 776.10 Informal ethics advice.

(a) *Advisors.* Covered attorneys may seek informal ethics advice either from the officers named below or from supervisory attorneys in the field. Within the Office of the JAG and HQMC, the following officials are designated to respond, either orally or in writing, to informal inquiries concerning this part in the areas of practice indicated:

(1) Head, Military Affairs/Personnel Law Branch, Administrative Law Division: administrative boards and related matters;

(2) Deputy Director, Criminal Law Division: military justice matters;

(3) Director, Legal Assistance Division: legal assistance matters;

(4) Deputy Director, JA Division, HQMC: cases involving Marine Corps judge advocates, or civil service and contracted civilian attorneys who perform legal services under the cognizance and supervision of Director, JA Division, HQMC; and

(5) Head, Standards of Conduct/Government Ethics Branch, Administrative Law Division: all other matters.

(b) *Limitation.* Informal ethics advice will not normally be provided by JAG/HQMC advisors concerning professional responsibility matters (e.g., ineffective assistance of counsel, prosecutorial misconduct) that are then the subject of litigation.

(c) *Written advice.* A request for informal advice does not relieve the requester of the obligation to comply with subpart B of this part. Although covered attorneys are encouraged to seek advice when in doubt as to their responsibilities, they remain personally accountable for their professional conduct. If, however, an attorney receives written advice on an ethical matter after full disclosure of all relevant facts and reasonably relies on such advice, no adverse action under

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this part will be taken against the attorney. Written advice may be sought from either a supervisory attorney or the appropriate advisor in paragraph (a) of this section. JAG is not bound by unwritten advice or by advice provided by personnel who are not supervisory attorneys or advisors. See § 776.54 of this part.

## **§ 776.11 Outside part-time practice of law.**

A covered USG attorney's primary professional responsibility is to the client, as defined by § 776.4 of this part, and he or she is expected to ensure that representation of such client is free from conflicts of interest and otherwise conforms to the requirements of these rules and other regulations concerning the provision of legal services within the Department of the Navy. The outside practice of law, therefore, must be carefully monitored. Covered USG attorneys who wish to engage in the part-time, outside practice of law must first obtain permission from JAG. Failure to obtain permission before engaging in the outside practice of law may subject the covered USG attorney to administrative or disciplinary action, including professional sanctions administered per subpart C of this part. Covered USG attorneys may obtain further details in JAGINST 5803.1 (series). This requirement does not apply to non-USG attorneys, or to Reserve or Retired judge advocates unless serving on active-duty for more than 30 consecutive days.

## **§ 776.12 Maintenance of files.**

Ethics complaint records shall be maintained by the Administrative Law Division, Office of the Judge Advocate General, and, in the case of Marine records, by the Judge Advocate Research and Civil Law Branch, JA Division, HQMC.

(a) Requests for access to such records should be referred to Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General (Code 13), 1322 Patterson Avenue, SE., Suite 3000, Washington Navy Yard DC 20374-5066, or to Head, Judge Advocate Research and Civil Law Branch, JA Division, Headquarters Marine Corps, Washington

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Navy Yard DC 20380-0001, as appropriate.

(b) Local command files regarding professional responsibility complaints will not be maintained. Commanding officers and other supervisory attorneys may, however, maintain personal files but must not share their contents with others.

## **§§ 776.13-776.17 [Reserved]**

## **Subpart B—Rules of Professional Conduct**

### **§ 776.18 Preamble.**

(a) A covered USG attorney is a representative of clients, an officer of the legal system, an officer of the Federal Government, and a public citizen who has a special responsibility for the quality of justice and legal services provided to the DON and to individual clients. The Rules of Professional Conduct contained in this subpart govern the ethical conduct of covered attorneys practicing under the Uniform Code of Military Justice, the Manual for Courts-Martial, 10 U.S.C. 1044 (Legal Assistance), other laws of the United States, and regulations of the DON.

(b) This subpart not only addresses the professional conduct of judge advocates, but also applies to all other covered attorneys who practice under the cognizance and supervision of the JAG. See § 776.2 of this part.

(c) All covered attorneys are subject to professional disciplinary action imposed by the JAG for violation of the Rules contained in this subpart. Action by the JAG does not prevent other Federal, State, or local bar associations or other licensing authorities from taking professional disciplinary or other administrative action for the same or similar acts.

### **§ 776.19 Principles.**

The Rules of this subpart are based on the following principles. Interpretation of this subpart should flow from common meaning. To the extent that any ambiguity or conflict exists, this subpart should be interpreted consistent with these general principles.

(a) Covered attorneys shall: